IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
September 16, 2008 Session

STATE OF TENNESSEE v. BENTON LEWIS

Direct Appeal from the Circuit Court for Sequatchie County
No. 4798 Buddy D. Perry, Judge

No. M2008-00055-CCA-R3-CD - Filed December 9, 2008

The defendant, Benton Lewis, presents for review a certified question of law pursuant to Tennessee Rule of Criminal Procedure 37(b)(2). The defendant pled guilty to driving under the influence (DUI). As a condition of his guilty plea, the defendant reserved a certified question of law challenging the denial of his motion to suppress based upon his allegation that he was subjected to an unconstitutional investigative stop. Following our review, we affirm the judgment of the trial court denying the defendant's motion to suppress.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

J.C. McLIN, J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., and ROBERT W. WEDEMEYER, JJ., joined.

Keith H. Grant (at trial and on appeal) and Rob Philyaw (at trial), Dunlap, Tennessee, for the appellant, Benton Lewis.

Robert E. Cooper, Jr., Attorney General and Reporter; Benjamin A. Ball, Assistant Attorney General; J. Michael Taylor, District Attorney General; and Steven Strain and David McGovern, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

The defendant was indicted for driving under the influence (DUI) on December 17, 2007. Thereafter, the defendant filed a motion to suppress challenging the validity of the investigative stop that led to his arrest for DUI. At the suppression hearing, Officer Lynn Lewis of the Dunlap Police Department testified that he and two fellow officers were standing outside of a Golden Gallon convenience station. Officer Lewis testified that while he was outside the Golden Gallon the defendant "drove by . . . he was screaming or [I] heard something like a yell or a scream coming from the vehicle." Officer Lewis recalled that he did not see who it was that did the yelling or screaming, he just saw the vehicle pass by. In response to the screaming noise, Officer Lewis and the other police officers became concerned and decided to "proceed after the vehicle." After Officer

Lewis and the other officers caught up to the defendant's vehicle, the blue lights were activated. The defendant then "turned onto Dell Trail and then he stopped in the roadway."

When asked by the state prosecutor what the speed limit was in the area, Officer Lewis testified that it was 45 miles per hour. When asked to estimate how fast he thought the defendant was driving, Officer Lewis opined that "he was doing more than 45, probably 50 or 55 [miles per hour]."

On cross-examination, Officer Lewis recounted that he heard yelling coming from the defendant's vehicle, but he did not hear any words. Officer Lewis also acknowledged that nobody had "radar on" the defendant's vehicle, and he was guessing the speed. Officer Lewis also acknowledged that he did not "pace [the defendant] to see how fast he was going." Officer Lewis said he did not remember anyone activating their blue lights as they began pursuit of the defendant, instead, Officer Lewis said he activated his blue lights about a "quarter mile from where [the defendant] turned into Dell Trail." Officer Lewis said he was the second car in pursuit of the defendant and therefore he did not observe the defendant's driving.

When asked by the court if Officer Lewis could tell how many people were in the defendant's vehicle at the time he heard the noise, Officer Lewis replied that he could not because the vehicle was a good fifty yards away. Officer Lewis described the noise he heard as real loud yelling. He admitted that he saw the defendant's window rolled down and the defendant turned towards him and the officers when they heard the noise. Officer Lewis said that he and the other officers pursued the defendant because the yelling could have been someone "hurt or someone screaming for help. We didn't know . . . just suspicious activity, and we went on a reasonable suspicion to check it out." Officer Lewis said that there was no other indication that a crime had been committed.

The trial court denied the defendant's motion to suppress. In doing so, the court noted that the police "had to stop the vehicle to make sure something bad wasn't happening."

The defendant subsequently entered a guilty plea to DUI in exchange for a sentence of eleven months, twenty-nine days probation following service of forty-eight hours in jail. As part of his plea, the defendant reserved the certified question of law: "Whether the officers had reasonable suspicion or probable cause to justify the stop of the Defendant's vehicle on the night he was arrested?"

ANALYSIS

We begin our review by addressing the state's challenge to the defendant's certified question of law. The state argues that the defendant failed to properly certify the question of law because the judgment form "contains neither a statement of this question nor a statement that the State and trial court agreed that the question is dispositive."

Tennessee Rule of Criminal Procedure 37(b) controls reservation of a certified question of law upon a plea of guilty. This rule requires:

> (i) the judgment of conviction *or other document to which such judgment refers* that is filed before the notice of appeal, contains a statement of the certified question of law that the defendant reserved for appellate review;
>
> (ii) the question of law is stated in the judgment or document so as to identify clearly the scope and limits of the legal issue reserved;
>
> (iii) the judgment or document reflects that the certified question was expressly reserved with the consent of the state and the trial court; and
>
> (iv) the judgment or document reflects that the defendant, the state, and the trial court are of the opinion that the certified question is dispositive of the case[.]

Tenn. R. Crim. P. 37(b)(2)(A)(i)-(iv) (emphasis added). The burden to properly certify a question for appeal lies with the defendant. *State v. Pendergrass*, 937 S.W.2d 834, 838 (Tenn. 1996).

In this case, the trial court contemporaneously entered a standard judgment form and an "Agreed Order" which expressly reserved the certified question of law. Noted on the judgment form is the following statement: "If an appeal is timely filed, the judgment shall be stayed pending appeal of the certified question." In the "Agreed Order," the parties and the court agreed upon the reservation of the certified question of law, identified the scope of the question reserved, and agreed that it was dispositive of the case. It is our view that the judgment form adequately incorporated by reference the certified question contained in the "Agreed Order." Therefore, we conclude that the certified question is properly before us for review. *See generally State v. Armstrong*, 126 S.W.3d 908, 910 (Tenn. 2003).

We now consider the reserved question, to wit: whether the officers had reasonable suspicion or probable cause to justify the stop of the defendant's vehicle on the night he was arrested.

"When evaluating the correctness of a trial court's ruling on a pretrial motion to suppress, the court on appeal must uphold the trial court's findings of fact unless the evidence preponderates otherwise." *State v. Williams*, 185 S.W3d 311, 314 (Tenn. 2006). "Questions of credibility of the witnesses, the weight and value of the evidence, and resolution of conflicts in the evidence are matters entrusted to the trial judge as the trier of fact." *State v. Lawrence*, 154 S.W.3d 71, 75 (Tenn. 2005) (quoting *State v. Odom*, 928 S.W.2d 18, 23 (Tenn. 1996)). However, appellate review of a trial court's conclusions of law and application of law to facts on a motion to suppress evidence is a de novo review. *See State v. Nicholson*, 188 S.W.3d 649, 656 (Tenn. 2006); *State v. Walton*, 41 S.W.3d 75, 81 (Tenn. 2001).

Both the Fourth Amendment to the United States Constitution and Article I, section 7 of the Tennessee Constitution protect individuals from unreasonable searches and seizures. These constitutional provisions are designed "to prevent arbitrary and oppressive interference with the

privacy and personal security of individuals." *State v. Daniel*, 12 S.W.3d 420, 424 (Tenn. 2000) (quoting *INS v. Delgado*, 466 U.S. 210, 216 (1984)). Therefore, "[u]nder both the federal and state constitutions, a warrantless seizure is presumed unreasonable, and evidence discovered as a result thereof is subject to suppression unless the State demonstrates that the seizure was conducted pursuant to one of the narrowly defined exceptions to the warrant requirement." *Nicholson*, 188 S.W.3d at 656; *see also State v. Binette*, 33 S.W.3d 215, 218 (Tenn. 2000). One such exception is a brief investigatory stop by a law enforcement officer if the officer has a reasonable suspicion, based upon specific and articulable facts, that a person has either committed a criminal offense or is about to commit a criminal offense. *Terry v. Ohio*, 392 U.S. 1, 21 (1968); *Binette*, 33 S.W.3d at 218. This narrow exception has been extended to the investigatory stop of vehicles. *See United States v. Brignoni-Ponce*, 422 U.S. 873, 881 (1975); *State v. Watkins*, 827 S.W.2d 293, 294 (Tenn. 1992). In evaluating whether a police officer has a reasonable suspicion, supported by specific and articulable facts, a court must consider the totality of the circumstances. *Binette*, 33 S.W.3d at 218. Those circumstances may include the personal observations of the police officer, information obtained from other officers and agencies, information obtained from citizens, and the pattern of operation of certain offenders. *State v. Watkins*, 827 S.W.2d 293, 294 (Tenn. 1992). Additionally, the court must consider any rational inferences and deductions that a trained officer may draw from those circumstances. *Id*. Reasonable suspicion is something more than an "inchoate and unparticularized suspicion or hunch." *Terry*, 392 U.S. at 27.

In this appeal, the defendant argues that police officers stopped his vehicle without the requisite reasonable suspicion to believe he had committed or was about to commit a crime. The defendant argues that Officer Lewis' testimony as to hearing a yelling or screaming noise coming from the defendant's vehicle amounted to nothing more than an "inchoate and unparticularized suspicion or hunch." In rebuttal, the state argues that the officers had reasonable suspicion to stop the defendant's vehicle because Officer Lewis' testified that he believed the yell could have been someone screaming for help.[1]

In the light most favorable to the state, Officer Lewis testified that he and other police officers seized the defendant because he heard an extremely loud yelling or screaming noise coming from the defendant's vehicle as the defendant drove by at night. Officer Lewis said that he and the other officers pursued the defendant because the yelling could have been someone "hurt or someone screaming for help." In denying the defendant's motion to suppress, the trial court found that police officers had reasonable basis to stop the defendant's vehicle because the loud screaming or yelling noise could not be identified and could have been a cry for help. The court found that the police officers "had to stop the vehicle to make sure something bad wasn't happening." In our view, the evidence does not preponderate against the trial court's conclusion that the police officers had reasonable suspicion, supported by specific and articulable facts, to support the investigative stop

[1] The parties do not dispute that the defendant was seized, and we note that "[u]pon turning on the blue lights of a vehicle, a police officer has clearly initiated a stop and has seized the subject of the stop within the meaning of the Fourth Amendment of the Federal Constitution and Article I, section 7 of the Tennessee Constitution." *Binette*, 33 S.W.3d at 218 (citing *State v. Pulley*, 863 S.W.2d 29, 30 (Tenn. 1993)).

of the defendant's vehicle. Accordingly, the judgment of the trial court denying the motion to suppress is affirmed.

CONCLUSION

The defendant properly presented a certified question of law. Following our review, the trial court's denial of the defendant's motion to suppress is affirmed.

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J.C. McLIN, JUDGE